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SETTLING WAR CONTRACTS WITH PRIVATE INDUSTRY.*

The report of the Secretary of War for the year just ended is replete with facts and figures of a magnitude unparalleled in the history of Uncle Sam's dealings with private industry.

Under the caption "The Settlement of War Contracts," Secretary Baker reports that following the Armistice "the contracts of the War Department in which it was found desirable to curtail production called for a total expenditure, if they had been carried to completion, of upward of \$6,000,000,000."

Summarizing the year's work in the settlement of these contracts he states, in part:

"A year has now passed since this department was confronted with the sudden reversal of its military supply problem and the readjustment of its relations to private industry. The task is not yet complete; many of the more difficult and larger settlements remain to be completed, but the greater part has been performed. The following figures as of November 1, 1919, will convey an idea of the progress made:

Total number of contracts and agreements necessitating settlement 24,988.

Contracts and agreements settled and adjusted 22,596.

Incompleted portion of contracts and agreements already settled \$2,091,435,426.50.

Amount approved for payment in final settlement of contracts and agreements already completely adjusted \$252,160,382.42.

Amount already approved for payment in partial settlement of contracts and agreements not yet completely adjusted \$78,942,212.70.

Per cent of amount paid or approved for payment in final settlement to uncompleted portions of contracts and agreements settled 12.5.

In addition, there are approximately 2,700 claims pending, based on alleged agreements not yet recognized by the Department as coming within the Dent Act.

In other words, thus far settlement has been made on the basis of 12½ cents for every additional dollar that would have been expended if the terminated contracts had been completely performed. A further reduction of this figure may be expected

*By Lin William Price, Government Attorney, Board of Contract Adjustment.

by the ultimate credit thereto of the amounts realized from the sale of material taken over by the United States as a part of the settlements."

The Secretary states that "it has been the experience of the department that contractors the country over feel that reimbursement for expenditures made, with some remuneration for the use of their capital and their services in work which had not resulted in completed articles by reason of the suspension of production, furnishes a basis of settlement by the Government which is fair and which they are entirely willing to accept."

In paying tribute to the spirit which prevailed among American business men in accepting such a basis of settlement without a provision for the allowance of prospective profits, the Secretary employs the following language:

"It is proper at this time to express to the contractors with whom the Government has negotiated, appreciation of the prevailing spirit of co-operation in furnishing desired information and of toleration for the occasional annoying delays incident to so complicated an undertaking. Although the claims as presented have frequently been cut to substantially lower figures, it remains true that deliberate attempts to impose upon the Government have been notably few. In fact, it may be said that the fine industrial morale developed during the war has continued into the transition period, and has supported the efforts of the War Department to ascertain and liquidate its obligations in the shortest possible time."

Comparing these settlements in point of time with those growing out of Civil War contracts the Secretary further states:

"When it is remembered that claims growing out of the Civil War and even out of earlier wars are still in course of litigation, or settlement through legislative action, it will be realized how much has been accomplished in the single year which has elapsed since the termination of hostilities. Obviously, the number of contracts, the amounts involved, the variety and novelty of questions raised, all immeasurably exceed the ordinary business transactions of the Government."

The goal of the effort of the War Department personnel in accomplishing these settlements, as is stated by the Secretary,

has been of a twofold character. First, to protect the interests of the United States. Second, to reach the quickest possible adjustment in each case, realizing that many of the contractors could ill afford to allow large amounts of working capital to remain tied up in unproductive work.

The instrument through which these early settlements have been made possible, has been the businesslike and well conducted contract settlement organization functioning under the immediate direction of the Secretary of War. The work of this organization, consisting of 42 boards, has been supervised and co-ordinated by a parent organization—The War Department Claims Board—of which the Assistant Secretary of War, Benedict Crowell, is the president.

A perspective of the diversified nature of the business coming before these boards is to be gathered from the title by which the 13 bureau boards are designated. These boards, all located at Washington, are:

Ordnance Claims Board, Air Service Claims Board, Chemical Warfare Service Claims Board, Signal Corps Claims Board, Office Chief of Engineers Claims Board, Director of Purchase, Transportation Service Claims Board, Board of Review for Medical and Hospital Supplies Division, Board of Review for Machinery and Engineering Materials Division, Board of Review for Motors and Vehicles Division.

To facilitate the disposition of the public business through local agencies, Ordnance District Boards were established at the following centres:

Baltimore, Bridgeport, Boston, Chicago, Cincinnati, Cleveland, Detroit, New York, Philadelphia, Pittsburgh, Rochester, St. Louis, Toronto.

Zone boards of contract review, office of the Director of Purchase and storage were established at:

Boston, New York, Philadelphia, Baltimore, Atlanta, Jeffersonville, Ind., Chicago, St. Louis, New Orleans, San Antonio, Omaha, San Francisco, Washington; the Chemical Warfare Service Board of Review, Gas Defense, Edgewood Arsenal,

and the District Offices of Air Service Finance at New York City.

In addition to the above named boards there was established during the war the Board of Appraisers and the Board of Contract Adjustment. The Board of Appraisers was organized to determine just compensation for real estate and various commodities requisitioned for military purposes and in addition has been assigned the settlement of an important class of terminated agreements for the acquisition of land or interests therein.

The Board of Contract Adjustment, of which Colonel John Ross Delafield is the chairman, was established shortly before the armistice to represent the Secretary of War in the solution of doubts, claims and disputes arising from contracts then in the course of performance, and with the change of conditions following the armistice has continued to exercise original and appellate jurisdiction in difficult cases resulting from the suspension of contracts and informal agreements.

In the course of contract settlements it developed that there were a considerable number of contracts and agreements entered into in the course of the stressed conditions which were not reduced to the form, and signed in the manner prescribed by statute. A ruling of the Secretary of the Treasury under date of November 25, 1918, that accounting officers could not make payment under those informally executed contracts, necessitated the invoking of remedial legislation from Congress to meet the situation. Congress, to provide relief in cases of contracts so informally entered into, on March 2, 1919 passed the Dent Act which authorizes the Secretary of War to "adjust, pay, or discharge," "upon a fair and equitable basis" the informal agreements entered into by an officer or agent acting under the authority, direction, or instruction of the Secretary of War, or that of the President, whether such agreements are express or implied. In the event that the individual, firm, company or corporation contractor shall not be willing to accept the adjustment, payment or compensation offered by the Secretary of War under that Act, the Court of Claims is given jurisdiction

on petition of such contractor to find and award fair and just compensation in those cases.

In its practical work of contract adjustment, however, the Board of Contract Adjustment, as the representative of the Secretary of War, in the exercise of its appellate jurisdiction, as well as its original jurisdiction under the Dent Act, has occupied an intermediate position between the several Bureau, District and Zone Boards and the Court of Claims.

In the absence of the establishment of these contract settlement organizations within the War Department, the contractor, as is stated by the Secretary of War, "would have had no recourse but to the Court of Claims for the damages sustained by him through the action of the Government and the burden imposed upon that court of trying out the multitude of difficult and intricate cases involved would have not only necessarily imposed a long delay in the settlement of these cases but also the hardship on the contractor of having the examination made and decision reached by those entirely unfamiliar with the history of the contract."

The liquidation of international obligations of the War Department has been likewise speedily accomplished through agencies specially created for that purpose. The first of these agencies was the United States Liquidation Commission whose duties were to function abroad, and the second was the appointment by the Secretary of War of a special representative to liquidate the relations of the War Department to the several Governments of the European Allies growing out of orders, purchases and engagements arising in the procurement of munitions, services and supplies in this country by such European Allies.

The United States Liquidation Commission was composed of Judge Edwin B. Parker, Mr. H. H. Johnson, Hon. Henry F. Hollis, and Brig. Gen. Charles G. Dawes, general purchasing agent of the American Expeditionary Forces in France.

Mr. Chester W. Cuthell was appointed as the special representative of the Secretary of War to liquidate those international obligations in the United States. The total collections, or balance due the War Department, as arranged by Mr. Cuth-

ell, is reported by the Secretary to aggregate \$319,464,229.00. The final casting of accounts of the United States Liquidation Commission is reported by the Secretary of War to be still in process. "It is safe, however, to say," the Secretary says, "that the foreign settlements aggregate a larger sum than those effected in the United States, and the gross claims reciprocally stated dealt with by the commission undoubtedly exceeded \$750,000,000.00."

In summarizing the work of these two agencies the Secretary states:

"In general, the work of these agencies was to file on behalf of the United States all claims against European Governments and nationals and to receive and settle all claims by European Governments and nationals against the U. S., growing out of the operations of the War Department."

Note.

The foregoing article is taken from the **Bankers Monthly**, for March, 1920. The author, Mr. Price, is a Chicago lawyer. He was one of the first to take up the duties of a government attorney for the Board of Contract Adjustment. During his long services he has made a serious study of Government contracts and is an authority on the Dent Act and War Department orders and circulars, relating to the settlement of claims arising out of such contracts.

As stated in the article, Colonel Delafield is Chairman of the Board of Contract Adjustment. His home is in New York. He is commissioned in the Ordnance Department and served as an officer therein during the war. His interest is now centered in the settlement of those contracts and purchase orders which were terminated because of the armistice. Colonel Delafield is thoroughly informed as to his work and has been able to give beneficial instruction to those under him in a series of lectures and also by preparing notes on the jurisdiction of the Board. Hon. Christopher B. Garnett, former Chairman of the State Corporation Commission of Virginia, was at one time a member of the Board.

Hon. John Garland Pollard, former Attorney General of Virginia and now on the Federal Trade Commission, was, until recently, Chief of the Trial Section of the Board. This section is constituted of the government attorneys whose duties are to prepare claims for hearing and to represent the Government at hearings before the Board. During his term of office, Mr. Pollard made every effort to expedite hearings on claims and it is due to his earnest efforts that the Board has made such remarkable progress in

the disposition of the claims before it. Mr. Price has stated the number of claims disposed of. If the reader is not duly impressed with this number, let him compare it with the work of any court or let him reflect that there are claims arising out of the Civil War that are not yet settled.

The following members of the Bar of the State of Virginia are, or have been, connected with the Board of Contract Adjustment, either as members of the Board or as government attorneys:

Edward M. Averill, Orange, Va.
Franklin C. Baggarly, Washington, Va.
Leon M. Bazille, Richmond, Va.
T. B. Benson, Washington Loan & Trust Bldg., Washington,
D. C.
C. T. Bowers, Culpeper, Va.
C. A. Burt, Cradock, Va.
Geo. S. Clark, Richmond, Va.
Isaac Diggs, Richmond, Va.
R. T. Walker Duke, Charlottesville, Va.
I. W. Eason, Richmond, Va.
John T. Elliott, West Falls Church, Va.
Richard S. Ely, Richmond, Va.
Major Richard R. Farr, Fairfax, Va.
Elben C. Folkes, Richmond, Va.
Walter L. Hopkins, Rocky Mount, Va.
Paca Oberlin, Sterling, Va.
John Garland Pollard, Richmond, Va.
Raymond R. Richardson, University of Virginia, Va.
A. G. Robertson, Staunton, Va.
James R. Sheppard, Jr., Richmond, Va.
Charles M. Shepperson, Alexandria, Va.
Robert W. Stump, Fairfax, Va.
John H. Tabb, Gloucester, Va.
Charles S. Vial, Richmond, Va.
Ashby Williams, Roanoke, Va.
Jennings C. Wise, Richmond, Va.
Paul B. Woodfin, Waynesboro, Va.

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